CLAIM AMENDMENTS

Claim Amendment Summary

Claims pending

- At time of the Action: Claims 1-35, 37-40, and 42-52.
- After this Response: Claims 7-9, 19-24, 27-29, and 55.

Canceled or Withdrawn claims: 1-6, 10-18, 25, 26, 30-54, and 56.

Amended claims: 7, 8, 9, and 19.

New claims: none.

Claims:

Claims 1-6 are **CANCELED**

7. **(CURRENTLY AMENDED)** ~~A method as recited in claim 1 further comprising~~ A method for measuring bandwidth between two entities on a communications network, the method comprising:

via a communications network, receiving at least a pair of non-compressible packets having measurable characteristics;

calculating bandwidth based upon, measurable characteristics of at least the pair of non-compressible packets;

determining if the calculated bandwidth is outside a given range of believability for calculated bandwidth;

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if the calculated bandwidth is determined to be outside the given range of believability, then querying a modem of an entity about a bandwidth setting of the modem ~~when result of calculating bandwidth is outside a given range of believability~~.

8. **(CURRENTLY AMENDED)** A method as recited in ~~claim 1~~ claim 7, wherein the queried modem is a modem of a receiving entity. ~~further comprising storing result of calculating bandwidth within a list of recent bandwidth measurements.~~

9. **(CURRENTLY AMENDED)** A method as recited in ~~claim 1~~ claim 7, wherein the queried modem is a modem of a sending entity. ~~further comprising:~~

~~storing result of calculating bandwidth within a list of recent bandwidth measurements;~~

~~finding a statistical derivation from such list, such derivation representing a most likely actual bandwidth between the two entities.~~

Claims 10-18 are **CANCELED.**

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19. (CURRENTLY AMENDED) A method for measuring bandwidth between two entities on a dynamic network, the method comprising:

via a dynamic network, sending at least a pair of non-compressible packets, the dynamic network being a communications network having no assurance that both packets of a pair of identical packets are handled in an identical manner while in transit on the communications network;

receiving a bandwidth calculation based upon measurements related to at least the pair of non-compressible packets;

selecting a file formatted for a given bandwidth that is equal to or less than the bandwidth calculation;

sending the selected file via the dynamic network.

20. (PREVIOUSLY PRESENTED) A method as recited in claim 19, wherein each of the pair of non-compressible packets is approximately fragmentation-avoidance size.

21. (PREVIOUSLY PRESENTED) A method as recited in claim 19, wherein each of the pair of non-compressible packets is highly entropic.

22. (PREVIOUSLY PRESENTED) A method as recited in claim 19, wherein each of the pair of non-compressible packets is formatted for TCP.

23. (PREVIOUSLY PRESENTED) A method as recited in claim 19, wherein each of the pair of non-compressible packets is formatted for UDP.

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24. (PREVIOUSLY PRESENTED) A method as recited in claim 19, wherein the packets of the pair are equivalent in size.

25. (CANCELED)

26. (CANCELED)

27. (PREVIOUSLY PRESENTED) A method as recited in claim 19, before the sending, further comprising selecting one of the pair of non-compressible packets from a set of differing non-compressible packets.

28. (PREVIOUSLY PRESENTED) A method as recited in claim 19, before the sending, further comprising generating the pair of non-compressible packets.

29. (ORIGINAL) A computer-readable medium having computer-executable instructions that, when executed by a computer, performs the method as recited in claim 19.

Claims 30-54 are **CANCELED.**

55. (NEW) A method as recited in claim 19, wherein the dynamic network is the Internet.

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56. (CANCELED)

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